REMARKS

OF

MR. CASS, OF MICHIGAN,

IN REPLY

To the reference to his opinions on the alleged SOVEREIGN POWER *of Congress over the Territories by Mr. Berrien, of Georgia.*

DELIVERED IN THE SENATE OF THE UNITED STATES, AUGUST 12, 1850.

When Mr. BERRIEN closed, Mr. CASS rose and said:

Mr. PRESIDENT: The Senator from Georgia, at the commencement of his remarks, made an allusion to the doctrine I have maintained in relation to the general power of Congress over the Territories. I rise to put myself right—not to defend others from the charge implied in the assertion, that I am the only man in the Senate, and almost the only citizen out of it, who does not believe, that this Government has full and unlimited power over these Territories; though I trust there are many, both here and elsewhere, who have not so far forgotten the faith of their fathers, as to acquiesce in such a monstrous assumption of arbitrary power. Why, it is the very doctrine, and almost the very words, of the declaratory act of George III, which our fathers resisted successfully—first in argument, and then in arms—*that* HIS MAJESTY IN PARLIAMENT HAS THE RIGHT, BY STATUTE, TO BIND THE COLONIES IN ALL CASES WHATSOEVER. We went to war against this very assumption, invoking the great right of self-government, and hallowed the principle we fought for by success, and made it the very corner-stone of our institutions. And now, before all the generation of the men of the Revolution has passed away, we are called upon to declare that *our majesty* (*this government*) *in Congress has the right, by statute, to bind the Territories in all cases whatsoever.* And I am rather pointed at as a marked man, and as almost the only one, who, in this middle of the nineteenth century, and in this republican land, does not bow the knee to this political worship. I trust—I am sure, indeed—that the Senator entirely misunderstands the sentiments of his countrymen, and that there is not a mere remnant, but a vast majority, who repudiate such pretensions, and who believe, that internal legislation, without representation or natural affinity, is the very essence of arbitrary power. And a tremendous power it is. It is claimed and exercised at St. Petersburg, at Vienna, and at Constantinople, as well as at Washington; and no matter by whom claimed, or where exercised—whether by Sultan, Emperor, King, Parliament, or Congress—it is equally despotism, unsupported by the laws of God, or by the just laws of man. Whence do you derive such a power? Put your finger upon a single clause or word of the Constitution, if you can, which gives it to you. Such a terrible means of oppression should not rest on shadowy implications, or remote analogies, or on elementary words, employed by European writers. It should have a visible, tangible foundation. It should be written in characters of living light, that the oppressor and the oppressed may not be deceived as to the power of the one, or the degradation of the other. And yet among the fifteen reasons given for the exercise of this authority, there is not one, which, by any rational construction, leads to such consequences. Fifteen reasons for the support of a power, which half that number of words would have conferred beyond cavil or dispute! That very fact is enough to destroy the pretension. *Congress shall have unlimited power over the Territories.* This short and explicit clause would have spared us many an argument, even if it had not spared the rights of man. Instead of such a declaration, what is the fact? The Senator from Geor-

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gia says, that Congress is sovereign. This I utterly deny. Congress is vested with no attribute of sovereignty, as the foundation of legislative power, nor is the word itself to be found in the Constitution. It is perfectly idle to go to Vattel, or to the earlier or later writers upon the laws of nations, to seek there the attributes of sovereignty, or to assume, as their consequence, the existence of power in the Government of the United States. The people of the respective States are the true sovereigns of this country, and they possess all the rights, which, by the usage of nations, belong to that condition. You may go to the elementary writers to find what these rights are, but you must go to the Constitution to find how, and how far their exercise has been confided to any department of the Government. If you find this delegation, you may act; if not, the people have reserved the power to themselves. You can declare war; this is one of the most important attributes of sovereignty. But you do not go to Grotius, or Puffendorf, or Vattel, for the foundation of your action; that you seek in the great deed of the American people. And if it were not there, you would be just as powerless to declare war, as you are to choose a king. Ours is a government of limited powers and of strict construction; and yet we so easily depart from first principles, that here is a strenuous effort to clothe this delegated legislature with sovereign power, because sovereignty is an essential condition of an independent people.

The Senator says, that all governments should be bound by precedent, but this more than any other. I can hardly conceive a greater heresy than this. Of all governments on the face of the earth, this is the last to be fettered by a blind obedience to precedents. I do not call in question the wisdom of a just regard to experience, and to the opinions and acts of those, who have gone before us. It is equally due to them and to us, that their views of great political questions should be carefully considered. And there is little reason to apprehend that sufficient weight will not be given to past experience. The proneness of human nature is all the other way. How easily the practice of to-day becomes the precedent of to-morrow, and the principle of the next day! A large portion of the political abuses in the world is to be traced to this predisposition to do a thing again, because it has been done before, and thus to perpetuate the worst state of things. With our reverence for those, who have preceded us, we should preserve our own self-respect, and exercise our own reasoning faculties. We have something better than tradition and commentaries for the foundation of our rights. We have a written Constitution to which we can appeal, and by which all the acts of the Government may be and should be tested. For many years after the adoption of the Constitution, the laws relating to the Territories passed *sub silentio*, and there is not even a tradition of any examination of the great question, which now divides us, for more than thirty years after that period. And are we to be told that the exercise of power under such circumstances sends us for our authority to the history of legislation, instead of the book of the Constitution? Such a doctrine would fasten the bank power upon us, and with much more justice, because its exercise was opposed from the commencement, and the highest minds in the country were employed in the consideration of the question.

I am not going over this subject again. I have had my share in its discussion. I desire only to submit a few remarks upon some of the views presented by the Senator from Georgia. He has briefly adverted to two reasons, which he says are urged as the foundation of the power of Congress to legislate for the Territories. These two reasons constitute but a small part of those which ingenuity—I had almost said scholastic ingenuity—has made or found upon this occasion, amounting, as I have already said, to fifteen in number. The two, however, thus prominently placed by the Senator, are these:

1. That the power to legislate for the Territories is derived from that clause of the Constitution, which authorizes Congress *to dispose of and make rules and regulations for the territory and other property of the United States.*

2. From the treaty-making power, which gives the right of acquisition, and therefore the right of legislation.

As to the first, I have nothing to say. The Senator himself has before told us, that, in his opinion, it does not confer the power claimed, and has expressed his surprise, that any one would resort to this clause for the foundation of such an authority. I concur with the Senator in this view; nor do I believe, if this question were now first presented for decision to the American people, unembarrassed by previous action, and fully discussed and examined, that scarcely a man would be found in this broad land to contend, that the mere authority to regulate and sell land—for such is the meaning of the word "territory" in this connexion, both obviously and agreeably to the dictum of the Supreme Court—that that authority, I say, conveys unlimited political power over the people inhabiting the Tertitories, and embracing all the great objects of life. And if such was the intention of the framers of the Constitution, all I have to say is, that they little deserved that character for wisdom and perspicuity, which tradition has assigned to them, and which I believe they possessed.

The Senator himself deduces this power of internal legislation from the treaty-making power. The steps are these: The authority to make treaties is expressly granted by the Constitution. The right of acquisition is an essential portion of the treaty-making power, and the power of unlimited legislation is essential to the use of the territory acquired, and thus may be exercised by Congress. Now, sir, let me ask the Senator, if this is the true derivation of the power of Congress, by what authority were Territorial Governments established in those portions of the United States, which were not acquired by treaty, but which made part of our original territory, as claimed by the act of independence? Five of these governments north and three south of the Ohio, were instituted over regions, no more acquired by treaty, than were the State's of Virginia or Massachusetts. They were not ceded to us, but belonged to us, and were included within the limits of the country recognised by England and by other powers of the world to be independent. As to the cessions by various States of their claims to land, these could confer no power on the General Government, not to be found in the Constitution. These cessions merely conveyed disputed rights, but the power of Congress over them must be determined by the Constitution. But, passing by this subject to the main point, I agree with the Senator, that the treaty-making power contains within itself the power of acquisition; it is an integral part of it; and were it not so, no territory could be acquired—for implied powers belong to the legislative department only, and are not applicable to the treaty-making authority. You can acquire by treaty; for that is one of the objects of these conventional arrangements among nations, as stipulations for commerce and navigation are others. But there the Constitution stops. The act of acquisition is complete upon the exchange of ratifications; and the act of government does not then depend upon the treaty, but upon the Constitution.

The Senator has presented this branch of the subject with great force and ability, as indeed he does all others; but I do not see the connexion, by which the power of government is bound to the treaty-making power.

The Senator says that the right of government is essential to the use of the property, and therefore we possess it. But, sir, we do not derive the right to use property from the treaty-making power; it is derived from an express clause of the Constitution, introduced for this very purpose. Certainly the use of the property is, to say the least of it, as legitimate a consequence of the right to acquire, as is the power to govern it; and if the framers of the Constitution considered the grants of power liable to such strict construction, that the acquisition of property would not give the right to use and sell it, *a fortiori*, it would not give the right to govern it—still less to exercise over it unlimited powers of legislation. But, under any circumstances, whence comes this pretension to regulate all the internal concerns of a distant people, without representation, and of whose condition we have little knowledge? If it be said it is necessary to institute governments, and therefore we institute them, why pass beyond this boundary to regulate at our pleasure all the domestic concerns of life? If you found your power upon this necessary action, you must limit its exercise by the existing necessity. To go

beyond is tyranny. Now, no one will contend that it is necessary for us to regulate all the internal affairs of the people of the Territories. That is best shown by the fact, that we have never done it—never attempted to do it. I recollect but one instance—always excepting this provision against slavery—in which Congress has interferred to control a subject purely municipal in its nature; and that was in the prohibition against the incorporation of banks, when the mania upon that subject was so extensively prevalent; and that, indeed, was not a mere local question—for it involved the interests, more or less, of other portions of the Union, in consequence of the extensive circulation given to the currency of those institutions. I do not believe, that another clear case of congressional interposition can be found upon the statute-book. Then, sir, you have never exercised this power of universal and unlimited legislation; and yet life, liberty, and property—all the great objects of human society—have been as well protected in the Territories as in the States, and by the local legislatures. I repeat, then, whence do you derive this unlimited claim? For if you take one step in this path of power, the whole career is open before you. Grant the right to regulate slavery, and you grant at the same time the right to regulate all the other concerns of life—the relations of husband and wife, of parent and child, of guardian and ward, as well as the relation of master and servant, including the condition of slavery. And I defy any man to put his finger upon any clause of the Constitution, which expressly, or by necessary and proper implication, grants such a power.

The Senator from Georgia has said, that the people of California had no right to organize themselves into a State Government, and that there is no instance of such a proceeding in the history of our territorial establishments. So far as respects the creation of a State government and the application for admission into the Union, independent of the action of Congress, there are several such cases in our political annals. So far as respects the organization of a political system itself, the creation of a government, no such precedent indeed exists; for never before did Congress utterly neglect its duty, and leave a new and remote acquisition without organization, exposed to all the evils of anarchy, and to be saved only by their own wisdom and firmness. Here is where all parallel and precedent cease; nor do I believe there is another country on the face of the earth, where such legislative negect of great interests can be found. And are we to be conducted through some politico-metaphysical process of reasoning, and asked to prove, step by step, the right of 100,000 American citizens to provide for their own social existence, and to apply for admission into this Union, as you would require proof to establish the ownership of a home? No, sir; there are far higher considerations than these involved in such a relation, and which appeal at once to the head and heart of every American. The Senator has himself said, that these people were justified in forming a government, but that they should have formed a territorial and not a State government. Well, sir, this concession is worth something; for it admits the validity of their political organization, and their right to frame laws and to administer them. And what reason does the Senator urge why the political action of the people should have been confined to one of these forms of organization, and not extended to the other? There is, of course, no legal or constitutional restraint, and whatever may exist must be imposed by some overruling principle, deduced from our institutions. The people, says the Senator, in forming a government, had no right to go further than the actual necessity required, and should have contented themselves with the smallest possible modicum of freedom. I can understand why a government, exercising delegated and limited powers, should be limited in their exercise by the necessity, which calls them into action. But what principle of human right or human reason requires a people, necessarily called to institute a government, to content themselves with the least possible degree of liberty, compatible with the actual peace of society, I confess my utter inability to discern. The rights are their own, not ours; and if we compel them to act, they must judge what their interest requires. I do not contend that they

have an actual claim to admission into the Union. I do not deny that it is our right and our duty to look to their circumstances, and to receive or reject them, as their numbers and condition may justify. If the number or condition of the people of California is not such as to justify their admission, let it be shown, and let their application be refused. But I do deny, that the nature of their political organization, brought about by our neglect, furnishes any valid reason for excluding them from this great Confederacy, into which they are so desirous to enter. But, after all, what could they have done, but precisely what they did? They had to organize a government; that the Senator from Georgia admits. And how were they to organize a Territorial Government, which necessarily, *ex vi termini*, derives its powers from the United States? That is the very essence of its existence, and that existence it could only acquire by an act of Congress; and because Congress would not pass any act upon the subject, was precisely the justification for the proceeding. How were they to possess a Territorial Governor or Judges, or to be placed under the control of the Federal judiciary by their own act? And without these bonds of connexion, and others like them, how was their Government to become a Territorial one? It could not be, sir—it could not be. Their *de facto* government was necessarily derived from themselves, and depended on themselves; their relation must be defined by the action of Congress; and, under these circumstances, can it be seriously contended, that they had no right to come here and ask admission into the Union, and that we ought to reject them because they had not a Territorial Government? Why, sir, this no way to deal with human rights. You cannot stand up before the people of this country and maintain such a position. You are at war with those everlasting principles of human nature and human freedom, which no power can destroy, and which, when taken from a people, are taken by force and not by right.

The Senator from Georgia says it is true there have been delay and neglect in the organization of a government for the people of California, but that this has been owing not to her, but to you, and you, and you, members of this body. And pray, Mr. President, what has this to do with the practical effect of congressional inaction? We are not inquiring into the causes of the dissension among Senators and Representatives, which have produced this unhappy result, but into the present condition of things, and into the effect, which this neglect has produced upon our Mexican acquisitions. We are, or should be, looking to the just claims of California, and not to any retrospect of our own errors. The Senator says that those associated with him in his views were anxious to establish governments, but that their offers were not accepted. Well, sir, this is just what members opposed to his views say in return: You are to blame for this state of things, for you would not accept the offers we made of co-operation. I need hardly say, that my views coincide with those of the Senator from Georgia upon the object of the Wilmot proviso; but still I do not shut my eyes to the fact, that in the consideration of the claims of California, mutual recrimination here conduces neither to our own harmony, nor to her interest. If we should go on in this way till doomsday, our labors would be as barren, as they have been thus far during the session. The true question is, what we ought to do—not what we have left undone, and why we have thus left it. The Senator denies that California is a State; while, for my part, I consider her as truly a State as any on the face of the earth. The Senator from Maine, (Mr. HAMLIN,) some time since, recalled a remark upon this subject, which leaves no other answer to be desired. He said it was men that made States—and it is so; not trees, nor lands, nor gold mines, but men, for whose use all these objects were created. And as to entering into the metaphysics of this matter, and into the solution of all the nice questions, which ingenuity may raise, respecting the transition of a community from one political condition to another, and the precise moment—ten minutes after twelve o'clock, for instance—when its chrysalis state terminates, and its transformation is complete, let him pursue these investigations, who has a taste for them—I have none. For one, I shall deal with the principles of our own institutions and with the rights of human nature in their plain, direct application to the condition of Ame-

rican society, wherever it may be. And doing so in this instance, I find the Congress of the United States has neglected one of its most imperative and important duties—the institution of a government for California; and having driven the people to do for themselves what we ought to have done for them, we have now no right to condemn their course and refuse their application, because they did not establish a Territorial Government, which alone could be established by the authority of Congress.

Here Mr. Berrien reiterated and explained his views, to which Mr. Cass replied:

I desire to put myself right upon one or two points, and then I shall abandon the subject. The Senator from Georgia, in his explanation of the word "sovereign," as he employs it, says that the doctrine he maintains is, that Congress may exercise sovereign power over the people of the Territories.

Mr. Berrien. That Congress may exercise the sovereign power which is delegated.

Mr. Cass. You can find no such provision in the Constitution. *To the law and to the testimony:* Take up the great charter of our country. Point me to the clause if it exists. You cannot find the word "sovereign," nor any power to be deduced from it, from the beginning to the end of the Constitution. It is a logical fallacy; it is far worse: it is a political assumption to claim for this Government the exercise of any power, not granted by the Constitution, and to found that claim upon a bare word, employed by elementary writers upon public law. The mere attribute of sovereignty gives you nothing. It does not belong to you; it belongs to the people of the respective States, and they have a right to exercise or to withhold from exercise any power, fairly appertaining to that condition, agreeably to the usage of nations. If they have granted any portion of these attributes to their Government, the Government may exercise them; if not, it cannot. But if granted, we must go to the Constitution to seek the power and its extent, and not to transatlantic writers, dealing in general principles, and with a strong monarchical bias pervading their works. I repeat a wish I have already expressed, that the word *sovereign* were expunged from our political vocabulary, and the word independent substituted for it. The idea would be sufficiently near, and we should avoid this eternal recurrence to European writers, and this seeking of the powers of our own Government in their elementary terms. But let that pass. The Senator from Georgia says—I suppose, by way of illustrating the extent of our power over the Territories—that the governor and judges were once clothed with the duty of legislation. This is so, sir, with an important limitation. They did not possess the power of original legislation, but only the power to adopt such laws of the States, as they might consider suitable to the circumstances of the Territory. This was the extent of their authority; and even this, bad as it was, was better than to leave the powers of internal legislation committed to a remote assembly, equally without intercourse, affinity, or responsibility. The governors and judges were with the people, made part of them, and were under that strong control, which American public opinion never fails to exert upon those within its influence. But, sir, the first plan adopted by the Continental Congress was founded upon much sounder principles than that which was afterwards substituted for it. That plan was agreed to in 1784, and allowed the people to meet together, appoint their officers, and administer their own Government. The change was a step backward in the path of freedom. But allow me to ask the Senator from Georgia if, notwithstanding this legislative precedent, making the Executive and Judiciary a *quasi* legislature, would he, would any other member of Congress, venture upon such an experiment at this time? No, sir; I trust no such political expedient, so utterly subversive of human rights, will ever be again resorted to by this Government.

The honorable Senator does not concur in the doctrine, that the people of the Territories have an inalienable right to legislate for themselves, and that the effect of our supervisory legislation does not confer this right upon them, but merely enables them to exercise it for themselves, as the acts we pass for call-

ing conventions to frame constitutions are merely auxiliary, preparing the way for the enjoyment of a great natural right, and not assuming to dole it out to them. And this is precisely the effect of our interference in the establishment of territorial governments. It gives the people nothing but the opportunity to exercise the privilege of self-government. Their rights never were ours; but owing to their peculiar condition, and to the rather anomalous relation they bear to us, it becomes our duty to provide a temporary political organization for them, leaving them to exercise under it their own rights, not ours, and just as much of them, as is compatible with the relation they bear to us. To show, that this doctrine of the right of internal legislation in a community was a good republican doctrine formerly, I will read an authority, which was once written upon the heart of every American, but which, if we yield to this *sovereign* claim, will soon become a monument of what has been, rather than an example of what should be. It is found in the Declaration of Independence—that powerful and beautiful exposition of human rights—the noblest State paper that ever announced to the world the aggressions of power, and a determination to resist them:

"He [the British sovereign, said the Congress of the Revolution] has refused, for a long time after such dissolution, to cause others [that is representatives] to be elected; whereby *the legislative powers, incapable of annihilation, have returned to the people at large for their* exercise, (not to the Sovereign King or Congress;) the State *remaining*, in the mean time, exposed to all the dangers of invasion from without and of convulsions within."

Here, Mr. President, is the emphatic annunciation, that the legislative powers of a colonial or territorial community belong to the people at large, and not to the sovereign, monarchical, or republican, agreeably to this new heresy, which is rearing its front among us. The British King granted charters, the American Congress acts for Government, but the legislative power belongs to the people. Well, if I am the only man in the Senate and out of it, as it is said, who does not bow the knee to this idol, I must seek that encouragement in the testimony of the dead, which I am not to find in the sympathy of the living. But, sir, I believe nothing of all this. I have lived a long and stirring life, and mingled much with my countrymen, and I think I know something of the true sentiments of the American people upon all subjects, where the rights of man are brought in question. Yes, sir, they need no long and subtle disquisitions when such questions arise. They do better than to enter into a cool process of reasoning—they feel. Their unerring instincts teach them, that he who claims unlimited power over a community, if he does not show their consent or their participation by representation, prefers the claim of a tyrant, even if it is made in the marble halls of republican legislation.

But, Mr. President, how strikingly is our conduct towards California foreshadowed in this eloquent allusion to the conduct of the British Government towards the colonies! The only difference is, that the one destroyed an existing government, and the other refused to create one, leaving the people equally without political organization, and equally "exposed to the danger of invasion from without and of convulsions within;" and leaving to them, also, the *exercise of those powers of preservation, which are incapable of annihilation, and which belong to them.* Few more striking parallels are furnished by history for the instruction of mankind. And this parallel does not stop here. It extends beyond the political transactions to the political doctrines. We have a right to bind you by legislation in all cases whatsoever, said the British Government to the colonies. We have an unlimited right to legislate for the Territories, says the honorable member from Georgia; and this pretension, faithfully followed to its result, is placed in rather a startling though true position, by a member of the House of Representatives, who said in debate there, that "this Government could establish a despotism in any of its Territories beyond doubt; it could sell them into slavery, if it pleased." No wonder the people of California desired to avoid a condition, which placed them in such a state of political degradation, thus boldly proclaimed by high men in high places.

Now, sir, a few words more, and I finish. I have already said that eight ter-

ritorial governments were established by acts of Congress over regions, not acquired by treaty, but making part of the original possessions of the United States; and I asked whence came the authority for the exercise of this power, if it depends truly upon the right of acquisition by treaty? Disputes existed between the Government of the Union and some of the States, respecting the claim to these districts—the former contending, that they were acquired by the blood and treasure of the whole confederacy, and therefore belonged to the whole confederacy; while the latter contended, that they were included within their chartered limits, and therefore belonged to them. It was a grave question, and at one time threatened the gravest consequences to the infant government. However, the dispute was satisfactorily adjusted, and the States interested ceded their claims to the United States on various terms, agreeable to themselves. Allow me now to ask the honorable Senator from Georgia, if it is possible that these cessions of a doubtful claim could enlarge the jurisdiction of Congress, and confer a power unknown to the Constitution? The cessions were not perhaps necessary to a complete title, but, at any rate, it was wise and prudent to obtain them. After they were obtained, and the dispute terminated, Congress, to ascertain its legal power over the property, had to go, not to these deeds of relinquishment, but to the great deed of the people. They there found that they *could sell and regulate the property;* and if they had not so found it, they could not have exercised any act of ownership over it, unless, indeed, we suppose, that this important provision was a mere work of supererogation—a supposition which no man has a right to make. So much for the use and control of the property. And now for the right of governing the people, who may live upon or near it—for be it remembered, that the territorial governments have operated upon hundreds of thousands of American citizens living upon their own lands, and not upon the land of the United States. I have lived myself a large portion of my active life in Territories, but never upon the public land; and I desire to know what right the General Government had to legislate for me, merely because they have a constitutional power to regulate their own property. I repeat, the cession made, whence comes the political power of legislation over the people? And I repeat, also, that this acknowledgment or transfer of title, whichever it may be, is as powerless to confer the great attributes of superior legislation, as to convert this confederated government into a consolidated one.

I will not renew what I have said respecting the chasm—which if any intellectual power could fill up, it could be done by the Senator from Georgia—between the right of acquisition, forming an integral part of the treaty-making power, and the right of unlimited legislation, necessary, as the Senator says, to the use of the property. Here is a leap that overstrides the Constitution. Mr. Madison tells us that the only legitimate defence of the Congress of the Confederation, for the institution of territorial governments, was the necessity for their action in the absence of constitutional power; and Judge Marshall, when exploring this subject, and tracing the authority first to one source and then to another, and evidently dissatisfied with his own conclusions, as appears by the significant remark, that "whichever may be the source whence the power is derived, the possession of it is unquestionable!!!" observes that "perhaps the power may result from the fact that it (the territory) is not within the jurisdiction of any particular State, and is within the jurisdiction of the United States." And who does not see, that this is but another name for necessity, "or inevitable consequence," as it is elsewhere called by this eminent man, resulting, not from constitutional provisions, but from undefined political relations, which impose obligations necessary to be fulfilled, but not prescribed in the Constitution? And in their practical recognition, we are bound by every principle of free institutions to encroach no further upon the liberty of the people than is necessary to give them the benefit of a just political organization, and to preserve the relation which should subsist between them and us.

[Here a further explanation from Mr. BERRIEN was briefly replied to by Mr. CASS.]

Mr. CASS. Mr. President, I must have the last word. (Laughter.) It is a great comfort, where one is pressed by a powerful opponent. I desire to tell the Senator why I dwelt upon his use of the word "*sovereign*" at greater length than I should otherwise have done. It was because, in this very body, in the discussions upon this subject, the power of congressional action was expressly and elaborately deduced from the attributes of sovereignty, and illustrious foreign names in the science of natural law were introduced as authorities in this question of American constitutional right, and this, too, by some of the ablest men among us. And I do not yet see why the Senator introduced the word in the manner he did, unless he attached importance to the attribute it represents, as bearing upon this question of legislative authority. Without being so intended, it almost necessarily misleads. The proposition THAT CONGRESS HAS CONSTITUTIONAL POWER TO LEGISLATE FOR THE TERRITORIES contains the real doctrine maintained by the Senator, and in words not to be misunderstood. Let it not be embarrassed by terms, not merely inapplicable, but changing, in fact, the actual scope of the inquiry, and introducing elements of controversy, leading us far astray.